

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 113 – SB 1279

March 14, 2021

SUMMARY OF BILL: Makes various changes to statute regarding violations concerning tobacco and minors. Removes the authority of law enforcement officers to issue citations to minors for purchase or possession of tobacco, smoking hemp, or vapor products and furthermore, removes juvenile courts' authority to charge a monetary civil penalty against the parent, guardian, or custodian of a minor who commits the aforementioned violations.

Requires the Department of Agriculture (TDA) to conduct at least two random, unannounced inspections each year at each location where tobacco or smoking hemp products are sold or distributed. Should a violation be discovered, the TDA is required to conduct an unannounced inspection at the violating location within six months of such violation.

Establishes a first-time civil penalty against a violating retailer of \$250, and removes the current civil penalty of \$1,500 for a retailer's fourth or subsequent violation.

Authorizes the commissioner of the TDA to suspend a retailer's tobacco license for a period of not less than 30 days and not more than 90 days if the retailer violates statute regarding sales or distribution to minors, required signage, tobacco vending machine sales, and required packaging, three or more times within a three-year period and may revoke such violating retailer's tobacco license for any subsequent violations.

Creates new licensing requirements for tobacco retailers. Requires retailers of tobacco products to obtain an annual license from the TDA prior to any tobacco sales. The Commissioner of the TDA is required to promulgate rules necessary to establish qualification and issuance of such license. Such rules must establish an annual fee, sufficient to fully fund the TDA's enforcement and licensing activities. Authorizes the Commissioner to suspend or revoke licenses. Any person who sells tobacco products without a license or any retailer who sells tobacco products with a suspended or revoked license commits a Class B misdemeanor.

Defines "closed-system vapor product" and "open-system vapor product." Establishes a vapor product tax rate of five cents per milliliter of consumable material on all closed-system vapor products and a tax rate of five percent on the wholesale cost price for open-system vapor products.

ESTIMATED FISCAL IMPACT:

**Increase State Revenue – \$1,167,800/FY21-22/General Fund
\$395,500/FY21-22/Department of Agriculture**

**\$2,335,600/FY22-23 and Subsequent Years/
General Fund**

**\$416,000/FY22-23 and Subsequent Years/
Department of Agriculture**

**Increase State Expenditures - \$371,300/FY21-22 and Subsequent Years/
Department of Agriculture**

Assumptions:

Wholesale tax of open-system vapor products:

- The wholesale of all vapor products in Tennessee are estimated to be \$57,626,170.
- It is estimated that open-system vapor products make up approximately 60 percent of closed and open system vapor products sold, making the recurring increase in state revenue \$1,728,785 ($\$57,626,170 \times 60\% \times 5\%$).
- Due to the effective date of January 1, 2022, 50 percent of the recurring increase, or \$864,393, will be realized in FY21-22 ($\$1,728,785 \times 50\%$).

\$0.05/milliliter closed-system vapor product tax:

- Based on Fiscal Review Committee staff research, approximately 833,524 Tennesseans use vapor products or electronic cigarettes.
- It is estimated that the average user consumes one unit a week; therefore, all Tennesseans consume 43,343,248 units per year ($833,524 \text{ Tennesseans} \times 52 \text{ weeks}$), and that each unit contains approximately 0.7ml, or 30,340,274 mL consumed a year ($43,343,248 \times 0.7\text{ml}$).
- It is estimated that closed-system vapor products make up approximately 40 percent of closed and open system vapor products sold, making the recurring increase in state revenue \$606,805 ($30,340,274 \times 40\% \times \0.05).
- Due to the effective date of January 1, 2022, 50 percent of the recurring increase, or \$303,403, will be realized in FY21-22 ($\$606,805 \times 50\%$).

Citation Revenue

- Pursuant to Tenn. Code Ann. § 39-17-1509(b), warning letters are currently issued to tobacco and hemp retailers for first time violations. No civil penalty is currently levied against such retailers.
- Based on information provided by the TDA, the Department currently issues 200 such warning letters per year.
- This legislation would charge \$250 for a first-time violation.
- An increase in citation fee revenue to the TDA of \$50,000 ($200 \times \250).

- This legislation is estimated to have no significant impact on the total number of second and third-time violations issued by the TDA.
- This legislation removes the civil penalty of (not more than) \$1,500 for fourth or subsequent violations.
- Based on information provided by the TDA, on average, the Department issues 10 penalties for fourth or subsequent violations, collecting an average of \$9,000.
- A net increase in civil penalty fee revenue of \$41,000 (\$50,000 - \$9,000).
- This legislation will not be enforced until January 1, 2022; therefore, in FY21-22, only half of full-year impact will be experienced.
- A net increase in state revenue in FY21-22 of \$20,500 (\$41,000 x 50%).
- A recurring net increase in state revenue in FY22-23 and subsequent years of \$41,000.

Inspections

- Currently, pursuant to Tenn. Code Ann. § 39-17-1509(a), the TDA is required to conduct random, unannounced inspections at locations where tobacco or smoking hemp products are sold or distributed.
- There is currently no required number of inspections per establishment, per year, which must be completed, per statute.
- This legislation will require, at a minimum, two inspections per location per year, and if a retailer is found in violation, the TDA is required to perform an unannounced inspection within six months of such violation.
- Currently, the DOA conducts 7,500 inspections, 6,500 of which are regular inspections and 1,000 of which are Synar inspections, which are federally-funded, through the federal Substance Abuse Prevention and Treatment Block Grant.
- There will be no increase in federal revenue for the increased number of inspections required by this legislation, since the required increase in inspections is required through state legislation, rather than federal legislation; therefore, number of Synar inspections will remain the same, unaffected by this legislation.
- Based on information provided by the TDA, there are approximately 15,000 tobacco/hemp retailers in the state of Tennessee.
- This will, at a minimum, require 30,000 regular, unannounced inspections in Tennessee (15,000 retailers x 2 inspections per year).
- In addition, there will be approximately 100 additional inspections carried out for violators, as required by this legislation.
- A total of 23,600 new inspections will need to be completed (30,100 – 6,500).
- Based on information provided by the TDA, the department currently has 9 part-time positions which cover the regular 6,500, at an average rate of 722 per year, or approximately 3 inspections per day (722 / 260 working days per year).
- The TDA will hire part-time positions to meet the increased number of inspections required by this legislation.
- The TDA will hire an additional 33 part-time inspectors (23,600 / 722).
- A recurring increase in state expenditures of \$371,250 [33 x (\$6,000 salary + \$2,000 travel + \$2,000 communication + \$1,000 supplies + \$250 training/conferences)].
- These positions will be hired on July 1, 2021 in order to be trained and ready to begin enforcement on the effective date of January 1, 2022.

- A recurring increase in state expenditures in FY21-22 and subsequent years of \$371,250.

Licensing Revenue

- There are currently approximately 15,000 retail outlets that would be subject to the licensure requirements introduced by this legislation.
- Licensing will require a fee per retailer, sufficient to defray the cost of licensing and enforcement of this legislation.
- Licensees will pay approximately \$10 per retailer, resulting in an increase in state revenue of \$375,000 (15,000 x \$25).
- Licenses will begin to be issued on July 1, 2022; therefore, an increase in state expenditures in FY21-22 and subsequent years of \$375,000.

Total Impact to State Government

- An increase in state revenue to the General Fund in FY21-22 of \$1,167,796 (\$864,393 + \$303,403).
- An increase in state revenue to the TDA in FY21-22 of \$395,500 (\$20,500 + \$375,000).
- A recurring increase in state revenue to the General Fund in FY22-23 and subsequent years of \$2,335,590 (\$1,728,785 + \$606,805).
- An increase in state revenue to the TDA in FY22-23 and subsequent years of \$416,000 (\$41,000 + \$375,000).
- An increase in state expenditures in FY21-22 and subsequent years of \$371,250.

IMPACT TO COMMERCE:

Increase Business Expenditures - \$416,000/FY21-22 and Subsequent Years

Assumptions:

- A recurring increase in business expenditures in FY21-22 and subsequent years of \$416,000 (\$375,000 licensing fees + \$41,000 civil penalties).
- Taxes levied by this legislation do not constitute a business expense, as affected businesses would raise the price of the product to account for the tax, thereby, passing on the cost to the customer.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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